HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1360 of 2003 (SS)

Prem Singh Rana V. Union of India & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 6.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1360 of 2003 (SS)

Prem Singh Rana son of Sri Diwan
Singh Rana, Village and P.O. Dor,
District Pithoragarh …….. Petitioner

versus

1. Union of India
2. The Chief of Army Staff, Miliary Head Quarter
   New Delhi
3. Central Commandant Kumaon Regiment,
   Ranikhet.
4. Officer Incharge, Records Regiment,
   Ranikhet …….. Respondents

Sri N.S. Kanyal, Advocate for the petitioner
Standing Counsel (Centre) for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ, order or direction in the nature of mandamus directing the respondents to issue discharge certificate and to pay salary and pensioner benefits to the petitioner.

Brief facts giving rise to the present writ petition are that the petitioner was enrolled in the Army on 21.8.1995. His enrolment No. was 14703087 and he undergone training at Kumaon Regiment Centre

Ranikhet. The petitioner has developed abdomen pain and he was sent for 28 days sick leave. Thereafter he reported to Medical Hospital Ranikhet and remained there for a week. The petitioner was down graded to lower medical category and after three months he was declared medically fit. Thereafter he underwent training for ten weeks along with other recruits. During second lap of recruitment training abdomen pain again developed to the petitioner and he was hospitalised at Ranikhet and from there he was referred to Command Hospital, Lucknow where he was finally declared unfit for the Military service and he was sent home without giving the discharge certificate and other benefits to the petitioner from Army on 29.5.1997.

The grievance of the petitioner is that after discharge from Army he made several representations for settlement of accounts and amount of A.F.P.P. Fund, A.G.I.S. and C.C. D.A. pension but his representation has yet not been decided by the respondents.

From the record it appears that the petitioner has served one year 10 months and as such according to the petitioner he is entitled for the payment of disability pension to the petitioner in accordance with Rule 5. The grant of disability Pension is governed by Rule 10 and 48 of Defence Services Regulations.

It has been held by the Apex Court in the case Madan Singh Shekhawat vs. Union of India and others (2000) UPLBEC 3471, as under:

"The grant of disability pension is governed by the various Rules found in Defence Service Regulations:

Rule 10 of the said Rules reads thus:

"Casual leave counts as duty except as provided for the Rule 11 (a)"

As per this Rule when an army personnel is one casual leave, same is counted a duty unless he co9mes under any one of the exceptions under Rule 11 (a) of the Rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per rule 10(a), the appellant was on duty at the time of the accident.

Rules 48 of the said Regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension.

Rule 48 reads thus:

"Disability pension when admissible An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of

a service element and a disability element in accordance with the regulation in this section.

In respect of accidents the following rules will be observed.

(a) ……..

(b) …….

(c) A person is also deemed to be on duty during the period of participation in recreation, organized or permitted by Service Authorities and to travelling in a body or singly under organised arrangements. A person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station at public expense."

This rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension.

The controversy in this case is whether the qualification" at public expense" found in this rule is so mandatory as to deprive an army personnel who is travelling to his leave station or vice versa on duty but at his own expense, of the benefit of disability pension if need arises.

It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

In Seaford Court Estates Ltd. v. Asher (1949) 2 All. ER 155, Lord Denning, J. (as and then was) held:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament …… and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

The question of disability pension came up for consideration in the case Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

"In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided

on account of disability which has occasioned due to any hurt, injury or illness. Sanction of disability pension, therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations.

Liberty is given to the petitioner to file a fresh representation to the respondents, which shall be considered and decided by the respondents.

The petitioner is directed to approach the appropriate authority within a period of two weeks after obtaining certified copy of this order who shall decide the same within a period of 6 weeks after receipt of certified copy of the order.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

06.11.2003 **(Rajesh Tandon, J.)**
Dhyani